

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**CIVIL REVISION NO. 1 OF 2023**

(Originating from the decision of the District Court of Mbulu in Probate and Administration Cause No. 23 of 2023)

**NAOMI PETER .....1<sup>ST</sup> APPLICANT**

**NAOMI PETER** (as next friend of

**DERICK DISMAS SAMO** (Minor).....**2<sup>ND</sup> APPLICANT**

**NAOMI PETER** as next friend of

**DARREN DISMAS SAMO** (Minor).....**3<sup>RD</sup> APPLICANT**

**NAOMI PETER** as a next friend of

**DAYANA DISMAS SAMO** (Minor).....**4<sup>TH</sup> APPLICANT**

**VERSUS**

**AINES KARIKIA MUNUO** (as administratrix of the estate of the late **DISMAS**

**LINGINYANI**


**SAMO)**.....**RESPONDENT**

**RULING**

15/9/2023 & 6/10/2023

**BARTHY, J.**

The applicants were aggrieved with the decision of the District Court of



Mbulu (hereinafter referred to as the trial court) in Probate and administration cause No. 1 of 2023 hence they have preferred the instant application under section 72(1) and (2) of the Probate and Administration of Estates Act [CAP 352 RE 2002], (hereinafter referred to as the Act) and section 71 (1)(c) of the Civil Procedure Code [CAP 33 RE 2022], (hereinafter referred to as the CPC). The applicants are seeking for the following reliefs;

- 1. That, this honourable court be pleased to call for and examine the records of Mbulu District Court on Probate and Administration Cause No. 23 of 2023 in order to satisfy itself of the propriety of the proceedings and decision thereon.*
- 2. That, the honourable court be pleased to quash and set aside the judgment at Mbulu District court dated 2<sup>nd</sup> January, 2023.*
- 3. That, the costs of application to follow events.*


A handwritten signature in black ink, appearing to read 'S. Any' or similar, with a horizontal line extending to the left.

The application is supported by an affidavit sworn by the first applicant herein. On the other hand, the respondent lodge counter affidavit to contest the application.

When the application was called on for hearing, Mr. Gwakisa Sambo learned advocate appeared for the applicants while Mr. Elidaima Mbise learned advocate appeared for the respondent. the application was disposed of orally.


In his submission in support the application, Mr. Sambo having adopted the affidavit in support of the application maintained that the trial court erred in granting the letters of administration of the deceased's estate to the respondent. Mr. Sambo pointed out several anomalies leading to the appointment of the respondent as administratrix of the deceased's estate.

He pointed out that there was neither citation of the matter on the widely

A handwritten signature in black ink, appearing to read "G. Mung'ala", written over a horizontal line.

circulated newspaper nor citation attached to the conspicuous place of the court.

He submitted that in terms of rule 75 of the Probate and Administration Rules GN 4 of 1965(the Rules) makes it mandatory for general citation be exhibited in some conspicuous places such as the court premises also the same must be published on the government gazette or widely circulated newspaper. He was emphatic that failure to comply with rule 75 of the Rules renders the entire proceedings a nullity. To buttress his arguments, Mr. Sambo referred the decision in the case of **Rashid Hassan v Mrisho Juma** [1988] TLR 134 and **Monica Nyamakare Jigamba v Mugeta Bwire Bhakome** Civil Application No. 199/01 of 2019 Court of Appeal of Tanzania at Dar es Salaam, **Tabu Ramadhai Mattaka v Fauzia Haruni Saidi Mgaya** Civil Appeal No. 456 of 2022 (both unreported). He therefore urged the court to nullify the proceedings and the decision of the trial court.



Another anomaly pointed out by Mr. Sambo is that the trial court had no jurisdiction to entertain the matter as the value of the deceased's estate is above 100 million. He maintained that in terms of section 57 of the Act as amended by the written Laws miscellaneous amendment Act No. 2 of 2016 set the limit of the District court to be assets not exceeding Tshs 100 million.

He contended that looking at the petition filed before the trial court indicates that the deceased's estate is Tshs 100 million however looking at the properties listed the value of the deceased's estate exceeds Tshs 100 million. To buttress his arguments, the learned advocate referred to the decision of this court in the case of **Ashura M. Masudi v Salma Ahmada** Civil Appeal No. 213 of 2004 (unreported). He contended that a decision arrived without jurisdiction is a nullity.

Mr. Sambo argued further that the respondent concealed some facts that the deceased had another wife with 3 children. He argued that during the deceased's burial ceremony both wives and children placed parting flowers hence the respondent intentionally concealed to the court these facts.

A handwritten signature in black ink, appearing to read 'Sambo', with a horizontal line drawn through the middle of the letters.

He argued that the Law of the Child Act discourages children's deprivation right to inheritance.

He argued further that there was forgery of the minutes of the clan meeting. He argued that although minutes of clan meeting are not necessary in petition for the letters of administration, the practice has to be encouraged. He referred to the decision in the case of **Elias Madata Lameck v Joseph Makoye**, PC Probate Appeal No. 1 of 2019 (unreported). He argued that the respondent did not involve the family members before filing the probate matter before the trial court.

Mr. Sambo argued further that going by the trial court's record, it is revealed that the deceased used to live at Arusha with the first applicant and was buried at Hanang' District. Hence he argued that, the place of domicile and abode was not at Mbulu where was the place of business. Hence he argued that the trial court illegally granted the letters of administration to the respondent.

A handwritten signature in black ink, appearing to read 'Sambo', with a horizontal line drawn through the middle of the letters.

He submitted that there was no list of legal heirs of the deceased which equally vitiates the proceedings before the trial court.

On reply Mr. Mbise having adopted the counter affidavit to form part of his submission, argued that the respondent was legally married to the deceased since 2001. He argued that the first applicant claimed there was separation order but she never attached the said order. He argued further that since the respondent and the deceased celebrated Christian marriage it was a monogamous marriage. He referred section 38(1) (c) of the Law of Marriage Act [CAP 29 RE 2019]. He therefore maintained that the first applicant cannot be the beneficiary of the deceased's estate.

Mr. Mbise argued further that going by the birth certificates of the second, third and fourth applicants they are not lawful children of the deceased. He argued that the date of birth and registration of the said children differ.

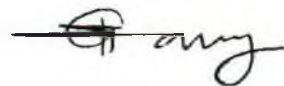
A handwritten signature in black ink, appearing to read "G. Mbise".

He argued that their births were not registered as required by sections 11 and 12 of the Births and Deaths Registration Act which requires registration of birth be made within 3 months since birth.

Mr. Mbise urged the court to order DNA to determine the paternity of the second and third applicants.

He argued further that it is clear that there was no any valuation made on the deceased's property hence the applicant has the burden of proof to establish that the deceased's estate exceeds 100 million. He argued that the applicants have not tendered any valuation report rather allegations which are contrary to section 110 of the evidence Act.

He cited the case of **Paulina Samson Ndawavya v Theresia Thomas Madaha** Civil Appeal No. 45 of 2017 Court of Appeal in which it was pointed out that the burden of proof never shifts on the weakness on the other party. He argued that the applicants have never proved the value of the estate by tendering valuation report.

A handwritten signature in black ink, appearing to read "F. M. Mbise".



Regarding the allegations that there was an exclusion of the deceased's assets, Mr. Mbise contended that the applicants have not proved such allegation. Regarding the claim that the respondent forged the minutes of family meeting, the learned advocate contended that is a criminal allegation which requires proof like that in criminal case. he argued that there was no proof of forgery or evidence to this allegation.

On the allegation that the deceased had no place of abode at Mbulu, Mr. Mbise argued that it the lawful wife of the deceased to establish the place of abode. He further argued that although there are deceased's assets at Hanang', the deceased had fixed place of abode at Mbulu and not Hanang'.

Regarding citation of the matter, Mr. Mbise argued that there was need for publication of the matter since parties belong to the same area. He argued if there was an order for publication to that effect then the respondent would have complied with that order. He argued further that after citation was made no any other person lodged complaint apart from

A handwritten signature in black ink, appearing to read "G. Mbise".

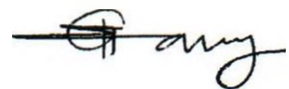
the applicant who is not the wife of the deceased and she has no interest in the deceased's estate.

As to who are the beneficiaries of the deceased estate, Mr. Mbise argued that it is the administrator of the deceased's estate who knows the beneficiaries of the deceased's estate. He argued further that the beneficiaries of the deceased's estate are the respondent and her children as stated on the petition and not the applicants. He contended that the claim by the applicants that they put flowers on the deceased's grave, by itself does not make them beneficiaries of the deceased's estate.

He urged the court to find that there were no irregularities on the proceedings of the trial court hence the matter should be dismissed.

On rejoinder, Mr. Samo essentially reiterated his submission in chief.

Having gone through the parties' rival submissions, the sole issue for my determination is whether the application has merits.

A handwritten signature in black ink, appearing to read "G. Any". The signature is written in a cursive style with a horizontal line through the middle.

Going by the submission by the learned advocate for the applicants, there are several issues raised regarding the propriety of the proceedings before the trial court. It has been argued that the trial court had no jurisdiction as the value of the deceased's assets exceed 100 million, also the respondent concealed some important information since the deceased had other issues who were not listed as beneficiaries of the deceased's estate.

I will begin my deliberation with the issue of citation of the matter. In terms of rule 75 of the Rules, requires citation be made prior to hearing of the probate matter. It reads thus;

*A general citation shall be in the form prescribed in Form 58 set out in the First Schedule and shall be exhibited in **some conspicuous part of the court house** and **published in the Gazette and such other newspaper or periodical (if any)** as the Judge may*

A handwritten signature in black ink, appearing to be 'G. Any' or similar, written over a horizontal line.

*direct.* [Emphasis added].

I have gone through the trial court's record, on 9/11/2022 the court issued an order for general citation, but the said order did not specify the modality of such citation. The record however reveals that on 8/12/2022 the respondent informed the trial court that she had made general citation at Sanu Ward office as well as Mbulu catholic church area. It is without doubt that there was no citation exhibited in the conspicuous part of the court house as required by the provision of the law stated above.


Similarly, the above provision makes it clear that publication should be made to the government gazette as well as newspaper of wide circulation. This was not complied as the well. Even to the places where the respondent claimed to have made the citation, there is no proof tendered by her that she indeed affixed citation to those places. Suffice it to say there was no compliance with rule 75 of the Rules.

A handwritten signature in black ink, appearing to read "Sany".

It is without doubt that the respondent informed the trial court the deceased used to live with the first applicant and there were some properties he left in her possession such as five acres of farm situated at Burka in Arusha City, one house at Sakina, one pharmacy at Arusha also one motor vehicle. The respondent further claimed the first applicant was left with title deeds of the said properties and therefore she prayed before the trial court that the first applicant be ordered to surrender those properties.

Going by the above facts as could be gleaned from the record, no doubt that the first applicant had interest in the deceased's estate and therefore she ought to have been notified on the pendency of the probate matter before the trial court.

The record further reveals that, the first applicant was only summoned before the trial court purposely to surrender the properties mentioned above. I am of the settled view that had there been proper citation of the matter, the first applicant would have entered appearance. In the case of **Rashidi Hassani v Mrisho Juma** (supra) this court pointed out that failure to comply with the requirement under rule 75 of the Rules is fatal.

A handwritten signature in black ink, appearing to read "R. Juma", with a horizontal line drawn through it.

Having determined the complaint regarding citation of the matter, I find no reason to determine the other complaint raised by the applicants. Consequently, the proceedings before the trial court and the appointment of the respondent as the respondent as administratrix of the deceased's estate are null and void. The matter is remitted before the trial court for compliance with the law. In the circumstance each party should bear its own costs.

It is so ordered.

Dated at Babati this 6<sup>th</sup> October 2023.



A handwritten signature in black ink, appearing to read 'G. N. Barthly', written over a horizontal line.

**G. N. BARTHY,**

**JUDGE**

**6/10/2023**

Ruling delivered this 6<sup>th</sup> day of October, 2023 in the presence of the 1<sup>st</sup> applicant and Ms. Belinda Alfayo advocate holding brief of Mr. Gwakisa Sambo and in the presence of the respondent and her advocate Mr. Elidaima Mbise.